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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18 CISCO SYSTEMS, INC.,

19 Plaintiff,

20 v.

21 ARISTA NETWORKS, INC.,

22 Defendant.
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Case No. 5:14-cv-05344-BLF (NC)

**DECLARATION OF ANDREA NILL
SANCHEZ IN SUPPORT OF PLAINTIFF
CISCO SYSTEMS, INC.'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL CONFIDENTIAL
INFORMATION IN CISCO'S RESPONSE
TO ARISTA'S BRIEF RE ANALYTIC
DISSECTION (ECF 652)**

Dept.: Courtroom 3 – 5th Floor
Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

**DECLARATION OF ANDREA NILL SANCHEZ IN SUPPORT OF PLAINTIFF CISCO SYSTEMS,
INC.'S ADMINISTRATIVE MOTION TO FILE UNDER SEAL (ECF 652)**

Case No. 5:14-cv-05344-BLF (NC)

1 I, ANDREA NILL SANCHEZ, declare:

2 1. I am an attorney licensed to practice law in the State of California and am an
3 associate with the law firm of Keker & Van Nest LLP, located at 633 Battery Street,
4 San Francisco, California 94111, counsel for Defendant Arista Networks, Inc. (“Arista”) in the
5 above-referenced action. Unless otherwise stated, the facts I set forth in this declaration are based
6 on my personal knowledge or knowledge I obtained through my review of corporate records or
7 other investigation. If called to testify as a witness, I could and would testify competently to such
8 facts under oath.

9 2. I submit this declaration in support of the Administrative Motion to File Under
10 Seal Confidential Information in Cisco’s Administrative Motion to File Under Seal Confidential
11 Information in Cisco’s Response to Arista’s Trial Brief Re: Analytic Dissection on November 14,
12 2016 (ECF 652). I have reviewed Cisco’s Motion to Seal and the Civil Local Rules of this Court
13 governing such motions, and submit this supporting declaration under Civil L.R. 79-5(e).

14 3. Cisco’s Motion to Seal seeks to file under seal documents and information
15 submitted in connection with its response to Arista’s trial brief on analytic dissection and
16 filtration, which is a non-dispositive brief. Because Cisco’s Motion to Seal relates to non-
17 dispositive briefing, the documents and information that the parties request to file under seal are
18 *not* subject to a strong presumption of public access. *See Kamakana v. City & County of*
19 *Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). Rather, the “good cause” standard of Rule 26(c)
20 of the Federal Rules of Civil Procedure applies to the material that Cisco’s Motion to Seal seeks
21 to withhold from public view. *Id.* at 1179. Civil Local Rule 79-5 further requires that a party
22 seeking to seal information and documents “establish[] that the document, or portions thereof, are
23 privileged, protectable as a trade secret or otherwise entitled to protection under the law.” Civil
24 L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable
25 material.” *Id.* I submit this declaration to provide additional facts in support of Cisco’s Motion to
26 Seal, and to provide facts establishing that the “good cause” standard has been met for materials
27 that Arista seeks to file under seal.

4. For purposes of a motion to seal, I understand that a “trade secret” is “any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.” *See In re Elec. Arts, Inc.*, 298 F. App’x 568, 569–70 (9th Cir. 2008) (nonprecedential) (quoting Restatement (First) of Torts § 757 cmt. b (1939)) (applying the Restatement’s definition of trade secret in the record-sealing context); *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972) (adopting the Restatement’s definition of trade secret).

5. I further understand that good cause—indeed, compelling reasons—may exist to file materials under seal when, for example, court filings could be used for improper purposes, such as “to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets.” *Kamakana*, 447 F.3d at 1178–79 (citation omitted). I further understand that good cause and compelling reasons may exist where court filings contain or discuss confidential source code, *see Apple, Inc. v. Samsung Electronics Co., Ltd.*, No. 11-cv-1846, D.I. 2190 at *3 (Dec. 10, 2012); internal and non-public procedures of financial institutions, *see Cowan v. GE Capital Retail Bank*, No. 13-cv-03935-BLF, 2015 WL 1324848, at *1-3 (N.D. Cal. Mar. 24, 2015); information about an entity’s confidential “business performance, structure, and finances that could be used to gain unfair business advantage against them,” *Schwartz v. Cook*, No. 15-cv-03347-BLF, 2016 WL 1301186, at *2 (N.D. Cal. Apr. 4, 2016); “highly sensitive information regarding [an entity’s confidential] product architecture and development,” *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014); emails containing confidential information about an entity’s “business practices, recruitment efforts, and discussions regarding potential partnerships with other product manufacturers,” *see Koninklijke Philips N.V. v. Elec-Tech International Co., Ltd.*, No. 14-cv-02737-BLF, 2015 WL 581574, at *1–2 (N.D. Cal. Dec. 10, 2015); and “information regarding non-public recruitment efforts and business practices” of a party. *See id.* at *2-3.

6. Cisco submitted a declaration in support of its Motion to Seal (ECF 652-1) that identified and attached highlighted copies of material that should be sealed. To the extent that those exhibits implicate Arista materials, I address those exhibits below in the order that they are

1 listed in Cisco's Motion. Per the instructions provided on the Northern District of California's
 2 website, this declaration is drafted so that it does not reveal confidential information, and
 3 therefore does not need to be filed under seal. *See* <http://www.cand.uscourts.gov/ecf/underseal>.

4 7. Cisco's Response to Arista's Trial Brief Re: Analytic Dissection (ECF 652-3):
 5 Good cause exists to seal pages 2:20-3:5 and 11:19-28 of Cisco's Response to Arista's Trial Brief
 6 Re: Analytic Dissection containing Arista confidential information. Those portions of the
 7 foregoing document discuss and purport to summarize highly confidential Arista witness
 8 statements, as well as internal and highly confidential Arista emails and documents, discussing
 9 the design and development of Arista software, Arista product testing and feature development,
 10 and overall product development strategies, all of which is sensitive and highly confidential
 11 business information to Arista. *See Apple v. Samsung*, 727 F.3d 1214, 1221–22 (Fed. Cir. 2013)
 12 (sealing is appropriate even under the compelling standards threshold if the release of the
 13 information will cause competitive harm to a business); *Apple Inc. v. Psystar Corp.*, 658 F.3d
 14 1150, 1162 (9th Cir. 2011) ("The publication of materials that could result in infringement upon
 15 trade secrets has long been considered a factor that would overcome this strong presumption.");
 16 *see also Nixon v. Warner Commc'n, Inc.*, 435 U.S. 589, 598 (1978) ("common-law right of
 17 inspection has bowed before the power of a court to insure that its records" are not used as
 18 "sources of business information that might harm a litigant's competitive standing"); *Ovonic*
 19 *Battery Co. v. Sanyo Elec. Co.*, Case No. 14-cv-01637, 2014 WL 2758756, at *2-3 (N.D. Cal.
 20 June 17, 2014) (where public disclosure of business information could harm a litigant's
 21 competitive standing by placing it "in a diminished bargaining position in future negotiations with
 22 potential customers and competitors," the records should be sealed). Arista does not seek to file
 23 under seal the highlighted text on pages 10:28-11:3 and 12:5-6.

24 8. Exhibit 2 to the Declaration of John M. Neukom (ECF 652-6): Exhibit 2 to the
 25 Neukom Declaration consists of excerpts from the March 17, 2016 deposition testimony of Arista
 26 employee Anshul Sadana. Arista does not seek to file this exhibit under seal.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct and that this declaration was executed on November 18, 2016, in
3 San Francisco, California.

4 
5 ANDREA NILL SANCHEZ